

Securing ^{110th Congress} AMERICA'S
FUTURE



IRAQ MICROMANAGEMENT

The Consequences of Playing Politics With Funding for Our Troops

- Republicans have consistently stood firm in arguing that funding necessary to support our troops should not be held hostage by political maneuverings.
- A strong majority of the public (61 percent in a March 23-25 *USA Today* Poll) oppose denying the funding needed to send any additional U.S. troops to Iraq.
- By not refusing to pass a clean supplemental bill that can pass the Senate and be signed by the President, Democrats risk extending the tours of troops scheduled to come home from Iraq and slowing the repair of equipment necessary to train soldiers.
- Any delay in funding will not prevent a build up of security forces in Iraq, but instead threatens to dramatically impact forces already on the ground.
- Former Iraq Ambassador Zalmay Khalilzad recently said that Iraq is “**fundamentally headed in the right direction**” and that he is “**cautiously optimistic**” based on several indicators.

“This kind of disruption to key programs will have a genuinely adverse effect on the readiness of the Army and the quality of life for soldiers and their families.”

-Defense Secretary Robert Gates.

The supplemental will pay for training and equipping soldiers in Iraq and Afghanistan:

- “If approved, the supplement will pay for military operations in Iraq and Afghanistan, repairing and replacing equipment damaged or destroyed in combat and in new technologies to protect U.S. service-members. This last includes a new generation of body armor, better armored vehicles and countermeasures against improvised explosive devices. IEDs have caused around 70 percent of the U.S. casualties in Iraq, officials said. The supplement also will provide funds for training and equipping the Iraqi and Afghan security forces.”
[American Forces Press Service, “Gates Urges Congress to Pass 2007 Supplemental Budget,” Feb. 27, 2007]

If the supplemental is not passed by APRIL 15th, the military will be forced to consider:

- Curtailing and suspending home station training for Reserve and Guard units;
 - Slowing the training of units slated to deploy to Iraq and Afghanistan;
 - Cutting the funding for the upgrade or renovation of barracks and other facilities that support quality of life for troops and their families;
 - Stopping the repair of equipment necessary to support pre-deployment training.
- [Secretary of Defense Robert Gates Department of Defense Media Roundtable, March 22, 2007]*

If the supplemental is not passed by MAY 15th, the military will be forced to consider:

- Reducing the repair work being done at Army depots;
 - Delaying or curtailing the deployment of brigade combat teams to their training rotations (this in turn, will cause additional units in theater to have their tours extended because other units are not ready to take their place);
 - Delaying the formation of new brigade combat teams;
 - Implementing a civilian hiring freeze;
 - Prohibiting the execution of new contracts and service orders, including service contracts for training events and facilities;
 - Holding or cancelling the order of repair parts to non-deployed units in the Army.
- [Secretary of Defense Robert Gates Department of Defense Media Roundtable, March 22, 2007. Available at <http://www.defenselink.mil/transcripts/transcript.aspx?transcriptid=39111>]*

Reasons for Cautious Optimism

Former Iraq Ambassador Zalmay Khalilzad recently said that Iraq is “fundamentally headed in the right direction” and that he is “cautiously optimistic” based on several indicators:

- Even before the full deployment of additional coalition forces, security operations in Baghdad appear to be having a positive impact. **Violence in Baghdad has fallen by nearly a quarter since the inception of Operation Law and Order.**
 - Iraqi security forces are doing a better job of carrying their share of the burden.
 - The operations within Baghdad are Iraqi-led. **Iraqis have followed through on their commitment to provide nine additional battalions to provide security in Baghdad**, and have stood up the Baghdad Operations Center, led by a three-star general.
 - **The Iraqi government has committed \$10 billion to its reconstruction budget, which means that Iraqis now will carry the burden in terms of rebuilding.** Iraqi leaders have also adopted measures on fuel import liberalization, investment law reform and fuel subsidy reductions, as well as maintaining fiscal discipline.
 - In Sunni-Arab areas, tribal leaders, and even some insurgent elements have turned against al Qaeda.
 - The recent approval of the hydrocarbon law by the Iraqi cabinet, which provides for an equitable distribution of the benefits of Iraq's mineral wealth, was a landmark achievement.
- [Ambassador Khalilzad Press Conference remarks March 26, 2007].*

Editorial Boards in Opposition to Arbitrary Timetables for Iraq

“By interfering with the discretion of the commander in chief and military leaders in order to fulfill domestic political needs, Congress undermines whatever prospects remain of a successful outcome. **It’s absurd for House Speaker Nancy Pelosi (D-San Francisco) to try to micromanage the conflict, and the evolution of Iraqi society, with arbitrary timetables and benchmarks.**” [*Los Angeles Times*, “Do we really need a General Pelosi?” March 12, 2007]

“At the tail of all of this logrolling and political bribery lies this stinger: Representatives who support the bill — for whatever reason — will be voting to require that all U.S. combat troops leave Iraq by August 2008, regardless of what happens during the next 17 months or whether U.S. commanders believe a pullout at that moment protects or endangers U.S. national security, **not to mention the thousands of American trainers and Special Forces troops who would remain behind.**” [*Washington Post*, “Retreat and Butter,” March 23, 2007]

“**The House is ill-equipped to micromanage American forces on the ground in Iraq ...** The House plan puts pressure in the wrong place: on U.S. military commanders. It sets up a series of benchmarks and timetables. Even if President Bush certifies that the Iraqis are making sufficient progress, U.S. combat troops would be redeployed by Sept. 1, 2008, at the latest. We fervently hope that U.S. combat troops have completed their mission by that date. **But the House plan starts to tie the hands of American commanders just when the troop surge seems to be showing the first tentative signs of working.**” [*Chicago Tribune*, “Congress and the troops,” March 24, 2007]

“The Democratic proposal doesn’t attempt to answer the question of why August 2008 is the right moment for the Iraqi government to lose all support from U.S. combat units. It doesn’t hint at what might happen if American forces were to leave at the end of this year – a development that would be triggered by the Iraqi government’s weakness. It doesn’t explain how continued U.S. interests in Iraq, which holds the world’s second-largest oil reserves and a substantial cadre of al-Qaeda militants, would be protected after 2008; in fact, it may prohibit U.S. forces from returning once they leave. **In short, the Democratic proposal ... is an attempt to impose detailed management on a war without regard for the war itself.**” [*Washington Post*, “The Pelosi Plan for Iraq,” March 12, 2007]

“[S]etting an arbitrary date for withdrawal only **handcuffs the troops trying to carry out their mission – and gives hope to their enemies.** ... We hope the House vote on the supplemental war-spending bill does not prove to be a reminder to Americans why the Constitution invested commander-in-chief responsibilities in one president, instead of 435 members of Congress.” [*Dallas Morning News*, “No Way to Show Support,” March 22, 2007]



Senate Republican
Communications Center

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Just The **FACTS**



SENATE DEMOCRATS RESURRECT DEFEATED TIMETABLE LANGUAGE FOR SECURITY SUPPLEMENTAL

DEMOCRATS PREVIOUSLY OPPOSED TIMETABLES:

SEN. MARK PRYOR (D-AR)

"Very, very tough decision there. But my position on that is I'm opposed to a public timetable... I'm opposed to the surge, but I think it should be a classified timetable, and we do that on our own terms. It's just like in World War II. The Germans knew we were coming at D-Day. They didn't know when and where. I don't want to telegraph what we're doing to the other side." (MSNBC's "Hardball," 03/16/07)

VOTED AGAINST - S.J.Res.9, "A Joint Resolution To Revise United States Policy On Iraq" (S.J.Res.9, Roll Call Vote #75: Failed 48-50: R 1-47; D 46-2; I 1-1, 03/15/07; Pryor Voted Nay)

SEN. BEN NELSON (D-NE)

"I don't think you can set a hard timeframe or date for withdrawal. Obviously, the other side is paying attention to what you're doing." (MSNBC's "MSNBC Live," 03/16/07)

"I do not believe we can put a timetable on withdrawal." (Jake Thompson, "Nelson Votes Against Iraq Withdrawal," *The Omaha World-Herald* [NE], 03/16/07)

"Deadlines are difficult to set. In this situation, I don't think it was helpful to set a deadline to withdraw. I do think it's important to measure progress or lack of progress toward the benchmarks." (MSNBC's "MSNBC Live," 03/16/07)

VOTED AGAINST - S.J.Res.9, "A Joint Resolution To Revise United States Policy On Iraq" (S.J.Res.9, Roll Call Vote #75: Failed 48-50: R 1-47; D 46-2; I 1-1, 03/15/07; Ben Nelson Voted Nay)

SEN. KENT CONRAD (D-ND)

“Putting [withdrawal from Iraq] on a calendar when something is inherently unpredictable doesn't seem like a good idea ... We have to be based on the conditions, rather than the calendar.” (Mary Clare Jalonick, “North Dakota Delegation Opposes Immediate Iraq Withdrawal,” *The Associated Press*, 11/25/05)

“I do not believe that it is a wise policy to set a specific date for a withdrawal from Iraq.” (Sen. Conrad, Congressional Record, S.6331, 06/22/06)

SEN. JIM WEBB (D-VA)

“Well, I don't think that we should have a specific timetable for getting out. I've always said that ... What I've said is you can't simply start withdrawing and then expect a diplomatic settlement to fall into place. That's a sign of weakness.” (ABC's “This Week With George Stephanopoulos,” 03/11/07)

“Anyone who tells you we can set a timetable for withdrawal doesn't understand war.” (Joe Klein, “Iraq? Who Cares! Say, Is Your Mom Jewish?” *Time*, 10/02/06)

DEMOCRAT LEADERS ONCE AGREED – TIMELINE “NOT A WISE DECISION”

SEN. HARRY REID (D-NV): “As Far As Setting A Timeline ... That's Not A Wise Decision, Because It Only Empowers Those Who Don't Want Us There.” (Sen. Reid, Remarks To The National Press Club, 01/31/05)

SEN. BARACK OBAMA (D-IL): “A Hard And Fast, Arbitrary Deadline For Withdrawal Offers Our Commanders In The Field, And Our Diplomats In The Region, Insufficient Flexibility To Implement That Strategy.” (Sen. Barack Obama, Congressional Record, S.6233, 6/21/06)

SEN. HILLARY CLINTON (D-NY): “I Don't Believe It's Smart To Set A Date For Withdrawal. I Don't Think You Should Ever Telegraph Your Intentions To The Enemy So They Can Await You.” (Village Voice, 9/22/05 Via “Clinton II: Parsing Clinton's History On Iraq,” *National Journal's The Hotline*, 02/13/07)

SEN. JOE BIDEN (D-DE): “A Deadline For Pulling Out ... Will Only Encourage Our Enemies To Wait Us Out.” It Would Be “A Lebanon In 1985, And God Knows Where It Goes From There.” (Sen. Biden, Remarks To The Brookings Institution, Washington, D.C., 06/21/05)

SEN. EVAN BAYH (D-IN): “I, For Example, Am Not In Support Of Circling A Date On A Calendar And Saying, ‘No Matter What, We're Out On That Date.’” (John M. Donnelly and Tim Starks, “Iraq Timetable Gains Momentum,” *CQ Weekly*, 03/12/07)

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SENATE REPUBLICAN

POLICY COMMITTEE

March 15, 2007

S.J. Res. 9 in Action

**Senate Micromanagement of the
War in Iraq Will Not Bring Victory**

Executive Summary

- Democrats have proposed S. J. Res. 9, a resolution to 1) constrain the use of force in Iraq to certain Congressionally pre-approved ends, and 2) provide a date certain for the withdrawal of U.S. forces from Iraq.
- S. J. Res. 9 places constraints on the President's direction of the use of force in a way that is anathema to our Constitutional system.
- It micromanages the conduct of the Iraq campaign from the floor of the United States Senate, as it provides that Congress, rather than the Commander-in-Chief, would be determining how force is to be directed.
 - Force in Iraq could only be directed to certain Congressionally pre-approved ends.
- Even though the Commander-in-Chief power is committed by the text of the Constitution to the President exclusively and without exception, S. J. Res. 9 inserts 535 commanders-in-chief into the conduct of military operations in Iraq.
- The resolution does purport to leave behind a "limited" number of U.S. troops to conduct counter-terrorist activities in Iraq, but it is unclear whether the language of the resolution would actually allow the United States to execute effective counter-terrorist operations.
- As a matter of policy, even the Iraq Study Group specifically considered and rejected setting a timetable for withdrawal from Iraq.
 - A recently published National Intelligence Estimate assessed how a precipitous U.S. withdrawal from Iraq directly threatens the United States homeland, as al Qaeda would use parts of the country as a safe haven to plan increased attacks in and outside of Iraq.
- In the near-term, the Senate will likely turn to the President's request for supplemental funding to conduct the war in Iraq. It is at this time that it would be Constitutionally appropriate for the Democrats to effectuate a policy preference to end the U.S. involvement in Iraq.

Introduction

Democrats have proposed S. J. Res. 9, a resolution to constrain the use of force in Iraq to certain Congressionally pre-approved ends, and provide a date certain for the withdrawal of U.S. forces from Iraq. According to Minority Leader McConnell, this is the 17th Democratic proposal on the topic of Iraq. S. J. Res. 9 places constraints on the President's direction of the use of force in a way that is anathema to our Constitutional system, and even the Iraq Study Group specifically considered and rejected setting a timetable for withdrawal from Iraq.

Constraining the Military Mission and Imposing a Withdrawal Timetable

S. J. Res. 9, the so-called United States Policy in Iraq Resolution of 2007, is directed to two primary ends, both of which directly hinder the war effort in Iraq. First, it attempts to micromanage the conduct of the Iraq campaign from the floor of the United States Senate. Second, it sets a date certain for the withdrawal of U.S. troops from Iraq. The resolution is, by Senator McConnell's count, the 17th Democratic proposal on the topic.¹

The operative clauses of the resolution are directed at the "prompt commencement" of a withdrawal of U.S. forces from Iraq. The resolution provides that the withdrawal shall begin not later than 120 days after the date of enactment, with the goal of withdrawing all U.S. combat forces from Iraq by March 31, 2008. It does provide an exception to the withdrawal, however, that a "limited" number of troops may remain to:

1. protect U.S. and coalition personnel and infrastructure,
2. train and equip Iraqi forces, and
3. conduct targeted counter-terrorism operations.

The resolution provides that "the President shall promptly transition the mission of United States forces in Iraq to [these] limited purposes."

Changing the Mission by Mischaracterizing the 2002 Authorization

The preamble of S. J. Res. 9 attempts to justify these new restrictions by asserting that circumstances referred to in the 2002 Authorization for Use of Military Force Against Iraq "have changed substantially." This mischaracterizes the mission arising out of the 2002 use of force resolution. The Democrats assert that the 2002 authorization gave the president the "power to destroy Iraq's weapons of mass destruction and, if necessary, to depose Saddam Hussein." They then build off this assertion to claim that the 2002 authorization is no longer relevant because "the weapons of mass destruction were not there [and] Saddam Hussein is no longer there."²

In actuality, the use of force resolution is in no way conditioned on those caveats, and, in fact, provides quite expansive discretion to the President in the use of that force. By its terms, the resolution authorizes the President "to use the Armed Forces of the United States *as he determines to be necessary and appropriate* in order to (1) defend the national security of the United States against the

¹ 153 Cong Rec. S2879 (daily ed. March 8, 2007) (statement of Senator McConnell).

² Joseph R. Biden, Jr., "Congress Should Repeal Its Authorization To Use Force In Iraq," *Boston Globe* (Feb. 27, 2007).

continuing threat posed by Iraq; and (2) enforce all relevant United Nations Security Council resolutions regarding Iraq.”³

In this regard, the U.S. military employs force in Iraq to defend the national security of the United States as the President deems necessary, and it is not restricted to very specific missions regarding Saddam Hussein or weapons of mass destruction. Thus, the mission under the current authorization recognizes that it is the President as Commander-in-Chief who should direct the use of force in Iraq.

War Requires One Commander-in-Chief, Not Many

Despite Democratic protestations to the contrary,⁴ S. J. Res. 9 micromanages the war in Iraq from the floor of the United States Senate. Simply put, Congress, rather than the Commander-in-Chief, would be determining how force is to be directed. The current authorization is that force is to be directed as the President, as the Commander-in-Chief, “determines to be necessary and appropriate.” Democrats now seek to change the mission to require commanders in the field to determine if a certain use of force is directed to one of the ends Congress has enumerated.

This effort to direct the use of force to certain Congressionally pre-approved ends is practically the definition of micromanagement, and is almost certainly anathema to the Constitutional system created by the Framers. S. J. Res. 9 would vest 535 Members of Congress with the Commander-in-Chief power, instead of recognizing that the Commander-in-Chief power is committed by the text of the Constitution to the President exclusively and without exception.

The Framers vested command of military operations in ONE Commander-in-Chief.

Congressional micromanagement of the war does not bode well for military success. The Framers knew that success in war required energy, secrecy, speed, and dispatch. These are qualities that by their nature inhere in a single person, which is why the Framers vested the decisions necessary to conducting a war exclusively in the President as Commander-in-Chief, rather than a multitudinous Congress.⁵ The Framers vested the power of Commander-in-Chief in a single person with “the supreme command and direction of the military and naval forces, as first General and Admiral.”⁶

It is also why the Framers specifically guarded against and warned of Congressional micromanagement of combat operations. As James Madison’s notes from the Constitutional Convention demonstrate, the Framers amended the original drafts of the Constitution, which had granted Congress the power to “make war,” to the power to “declare war,” specifically because “‘make’ war might be understood to ‘conduct’ it which was an Executive function.”⁷ The Supreme

³ Authorization for Use of Military Force Against Iraq Resolution of 2002, § 3(a), Pub. L. No. 107-243, 116 Stat. 1497 (emphasis added).

⁴ Joseph R. Biden, Jr., “Congress Should Repeal Its Authorization To Use Force In Iraq,” *Boston Globe* (Feb. 27, 2007) (asserting that “repealing and replacing the 2002 authorization is not micromanagement from Washington”).

⁵ See Federalist 70 (“Decision, activity, secrecy, and dispatch will generally characterize the proceedings of one man in a much more eminent degree than the proceedings of any greater number; and in proportion as the number is increased, these qualities will be diminished.”).

⁶ Federalist 69.

⁷ 2 The Records of the Federal Convention of 1787, p. 319 (Max Farrand ed., 1911).

Court has confirmed this understanding, as it has denied Congress the power of legislation that “interferes with the command of the forces and the conduct of campaigns [because] that power and duty belong to the President as Commander-in-Chief.”⁸

Timetable for Withdrawal STILL Endangers National Security

In addition to being offensive to our Constitutional system, S. J. Res. 9 sets a date certain for the withdrawal of U.S. forces from Iraq, and directs that the withdrawal begin in 120 days. First, even the Iraq Study Group “rejected the immediate withdrawal of our troops,”⁹ and opposed “set[ting] timetables or deadlines for withdrawal.”¹⁰ By analogy, Senator Biden, in supporting the intervention in Bosnia, cautioned against the dangers of setting “an artificial deadline” for the withdrawal of troops because that “would turn our troops into lame ducks as a given date approaches.”¹¹ That rationale is at least as compelling in Iraq as it was in Bosnia.

By demanding the withdrawal of U.S. forces from Iraq according to a timetable rather than conditions on the ground, S. J. Res. 9 ignores how U.S. forces, by their presence in Iraq, “remain an essential stabilizing element in Iraq,” as a recently published National Intelligence Estimate (“NIE”) concludes.¹² Their presence has the effect of preventing the collapse of Iraq, which, as Robert Kagan of the Carnegie Endowment for International Peace notes, would “not be the end of our problems but the beginning of a new and much bigger set of problems.”¹³ The National Intelligence Estimate provides greater fidelity to that set of problems and confirms precisely what would be the consequences of that withdrawal:

- al Qaeda would attempt to use Anbar province to plan further attacks outside of Iraq;
- neighboring countries would consider actively intervening in Iraq; and
- sectarian violence would significantly increase, accompanied by massive civilian casualties and displacement.

The NIE notes how a precipitous U.S. withdrawal from Iraq directly and immediately threatens the United States homeland. It assessed that “AQI [al Qaeda in Iraq] would attempt to use parts of the country—particularly al-Anbar province—to plan increased attacks in and outside of Iraq.” For example, Lieutenant General Michael Maples, the Director of the Defense Intelligence Agency, recently stated that “documents captured in a raid on an al-Qaida in Iraq (AQI) safehouse in Iraq revealed AQI was planning terrorist operations *in the U.S.*”¹⁴

This analysis demonstrates that it is certain that the enemy in Iraq will not stop targeting the United States were the United States to set a date certain for the withdrawal of its forces from Iraq. It

⁸ *Ex Parte Milligan*, 71 U.S. (4 Wall.) 2, 139 (1866).

⁹ Iraq Study Group, Final Report p. 73.

¹⁰ Iraq Study Group, Final Report p. 67.

¹¹ Joseph R. Biden, *Bosnia: Why the United States Should Finish the Job*, SAIS Review, Vol. 18, no. 2, p. 1 (Summer/Fall 1998).

¹² National Intelligence Council, Prospects for Iraq’s Stability: A Challenging Road Ahead, National Intelligence Estimate (Jan. 2007).

¹³ Robert Kagan, “Grand Delusion,” *Wash Post* B7 (Jan. 28, 2007).

¹⁴ Lieutenant General Michael Maples, Prepared Testimony of the Director of the Defense Intelligence Agency before the Senate Select Committee on Intelligence hearing on current and projected national security threats to the United States (The Annual Worldwide Threat Hearing), p. 8, Jan. 11, 2007 (emphasis added).

is simply folly to believe that terrorists using Iraq as a safe haven would cease efforts to attack the U.S. homeland if the U.S. troops were to be withdrawn from Iraq. Moreover, to plot their attacks, it would seem that the terrorists would simply orchestrate their strategy around the date set for withdrawal. Robert Kagan noted how many critics of the war “seem to believe it is a problem that can be made to go away, [on the rationale that] once American forces depart, Iraq will no longer be our problem.”¹⁵ He concluded that “this is a delusion,” and the evidence bears this out.

The Democratic response.

In response, Democrats may first claim that S. J. Res. 9 is not the precipitous withdrawal the Iraq Study Group rejected. The plain language of S. J. Res. 9, however, mandates that the withdrawal begin in 120 days.

They may then emphasize that they purport to leave behind a force to conduct counter-terrorist activities in Iraq. It is unclear whether the language of the resolution would actually allow the United States to execute effective counter-terrorist operations. First, the resolution, by its terms, directs that only a “limited” number of troops may remain behind for this purpose.

Second, and more importantly, a continuous on-the-ground presence is essential to the success of counter-terrorism operations. As Fred Kagan of the Carnegie Endowment for International Peace has explained, a local population comes to trust a counter-insurgent force that is continuously present in the area, rather than one that disengages from populated areas. As the counter-insurgent forces continue to gain the trust of the local population, the local population comes to provide invaluable intelligence to the counter-insurgent forces.¹⁶ S. J. Res. 9, on the other hand, seems like it would preclude this continuous on-the-ground presence, which is the force posture essential to successful counter-terrorist operations.

Appropriations: the Appropriate Method of Congressional Action

The Framers clearly did not leave Congress without a role in this area, as they contemplated the role of the Congress in war-making powers, and it was their consistent understanding that Congress’s chief institutional check on executive war powers was the power of the purse.¹⁷ Even before the power of the purse comes into play, the Congress actually has to first raise and support an army over which the President is to be Commander-in-Chief.¹⁸ But of more relevance to this issue, as Professor John Yoo notes, “the appropriations power . . . give[s] Congress a sufficient check on presidential warmaking. . . . [T]he great expense in conducting war requires the president to seek supplemental appropriations from Congress. In the course of approving these measures, Congress can consider fully the merits of war, and it can easily forestall hostilities simply by refusing to appropriate a single dollar.”¹⁹

¹⁵ Robert Kagan, “Grand Delusion,” *Wash Post* B7 (Jan. 28, 2007).

¹⁶ Frederick W. Kagan, *Choosing Victory – A Plan for Success in Iraq*, p. 22, available at http://www.aei.org/docLib/20070105_ChoosingVictoryFINALcc.pdf.

¹⁷ John Yoo, *The Powers of War and Peace*, p. 104 (Univ. of Chicago Press 2005).

¹⁸ U.S. Const, art. I, § 8.

¹⁹ John Yoo, *The Powers of War and Peace*, p. 22 (Univ. of Chicago Press 2005).

For over four years now, Congress has appropriated funds to the President to conduct the war in Iraq. This Congressional act of continued appropriations in support of a military mission has the effect of continually ratifying the President's use of force in Iraq. Courts have consistently held that continued Congressional appropriations in support of a military engagement can be read to show Congress's implied ratification of Presidential action.²⁰

In the near-term, the Senate will likely turn to the President's request for supplemental funding to conduct the war in Iraq. It is at this time that it would be Constitutionally appropriate for the Democrats to effectuate their apparent willingness to end the U.S. involvement in Iraq. As Professor Robert F. Turner has noted in Congressional testimony, if the Senate really had the political will to end the war in Iraq, "the Constitution effectively vests Congress with the constitutional power to end a war. . . . By refusing new appropriations and rejecting requests for new troops and supplies, Congress can virtually assure that American military forces and/or allies who rely upon our assurances will be defeated and our enemies will prevail on the battlefield."²¹

Current Democratic posture.

The Senate Democratic leadership seems content to call for a change of course in Iraq rhetorically without taking actual steps to withdraw U.S. forces from there. Most notably, the Majority Leader has not brought to the floor any legislative vehicle that would cut off funds for the President's use in Iraq.

The appropriations power is the main power the Framers provided to Congress to check the President's power as Commander-in-Chief. We should not mistake a lack of political will to execute that power with Constitutional impotence. Congress is clearly far from powerless in this area, and the appropriate medium by which it would express its opposition to a Presidential initiative in this area would be either to cut off funding for U.S. operations in Iraq immediately, or refuse to pass new appropriations once the current appropriations expire.²²

Conclusion

S. J. Res. 9 is the quintessential micromanagement of combat operations that the Framers specifically guarded against and warned of. The Constitution is clear on this point, as the Commander-in-Chief power is committed by the text of the Constitution to the President exclusively and without exception. Despite Democratic protestations to the contrary, S. J. Res. 9 does nothing more than insert 535 commanders-in-chief into the conduct of military operations in Iraq.

RPC Staff Contact: Michael Stransky, 224-2946

²⁰ *E.g., Drinan v. Nixon*, 364 F. Supp. 854 (D. Mass. 1973). *See also* Randolph D. Moss, Memorandum of the Assistant Attorney General of the Office of Legal Counsel to the Attorney General, Dec. 19, 2000, *available at* <http://www.usdoj.gov/olc/final.htm> (advising President Clinton that emergency supplemental appropriations for military operations in Kosovo constituted authorization for continuing hostilities there).

²¹ Robert F. Turner, Prepared Testimony before the Judiciary Committee hearing regarding Exercising Congress's Constitutional Power to End a War, Jan. 30, 2007.

²² David Rivkin and Lee Casey, "What Congress Can (And Can't) Do on Iraq," *Wash. Post* A19 (Jan. 16, 2007).

Securing ^{110th Congress} **AMERICA'S
FUTURE**



UNION PAYBACK

Democrats' Big Labor Payback Comes at Expense of National Security and Workers' Rights

Since becoming the Senate's majority party in January, Democrats have boldly exhibited their determination to repay big labor for its 2006 campaign support. Democrats have demonstrated this determination in two significant ways:

- (1) Democrats amended their 9/11 Commission recommendations bill to grant Transportation Security Administration (TSA) employees collective-bargaining power, even though the TSA and the Department of Homeland Security both opposed the measure due to its injury to national security.
- (2) Democrats have promised to pass the so-called Employee Free Choice Act, which would effectively deny workers the right to cast a private ballot in union organizing elections, even though 87 percent of voters believe privacy should be preserved.¹

More information on each of these ill-advised provisions is included in the following documents.

Labor Unions' Role in the Last Election Cycle

- "Exit polls indicated union voters chose Democrats by more than a 2-1 ratio, and labor says its supporters made the difference in many of the races that put Democrats back in the majority in Congress."²
- "Organized labor spent some \$100 million on get-out-the-vote efforts last year, and reached tens of millions of voters by phone calls, mail and door-to-door canvassing on behalf of labor-backed candidates."³
- "Labor political action committees contributed \$59.5 million for federal candidates, up 11 percent from the previous election cycle and higher than any other industry grouping, federal filings show."⁴

¹ McLaughlin & Associates poll, January 2007, available at <http://www.myprivateballot.com/UploadedFiles/CDW%20Polling%20Memo%20National.pdf>.

² Associated Press, "After '06 successes, labor gets ready for presidential race," March 23, 2007.

³ *Ibid.*

⁴ *Ibid.*

Union Payback Part #1: Democrats Jeopardize National Security to Grant Collective-Bargaining Power to TSA Screeners

In conjunction with the 9-11 recommendations bill, Democrats insisted on granting Transportation Security Administration (TSA) employees collective-bargaining power, even though the TSA and the Department of Homeland Security both opposed the measure (which was *not* a 9-11 Commission recommendation). By doing so, Democrats showed complete disregard for the threat this change will pose to national security. Instead of treating the TSA as a first line of defense in the war against terrorism, Democrats used the agency as a vehicle for political payback.

Collective Bargaining for TSA Employees Undermines National Security¹

- Under current law, the head of the TSA has the authority to reject collective bargaining for transportation security officers.²
- The TSA is designed to be a flexible agency capable of shifting employees and altering screening practices at a moment's notice to accommodate changing security needs and travel demands. The agency's design also ensures the TSA's security systems are unpredictable.
- Under collective bargaining, the TSA would be required to negotiate with as many as 450 different unions (one at each airport in which the TSA operates) for every change it wishes to implement. This delay would preclude the agency from rapidly responding to imminent security threats.
- Collective bargaining would also hinder the TSA's ability to ensure a high-skilled, well-trained workforce. Granting collective bargaining rights to TSA employees could change the current system's performance-based personnel system to one that is based on seniority. Moreover, such a change could curtail employees' opportunity for advancement as all training would first have to be negotiated with unions.

¹ For more information, see Senate Republican Policy Committee, "Providing Collective Bargaining Rights to TSA Employees Undermines National Security," available at www.rpc.gov.

² See the Aviation and Transportation Security Act of 2001, P.L. 107-71, Section 111(d).

Even As Democrats Paid Back Union Supporters, They Blocked Republican Efforts to Improve Homeland Security

Republicans fought to enact real national security improvements on the 9/11 Commission bill. Despite Democrat resistance, Republicans ultimately forced a vote on a package containing five national security-related amendments. That package failed, however, after Democrats refused to invoke cloture on the amendment and allow it to be adopted.

The Republican National Security Amendment Package Blocked by Democrats:

- 1) Terrorism Subpoenas (Bond) — To equip federal terrorism investigators with administrative subpoena authority so that they may quickly and efficiently gather information held by third parties about possible terrorist activity without necessarily alerting the suspects. Congress has already granted this authority in 335 different contexts to most government agencies, including postal inspectors and the Small Business Administration.
- 2) Material Support/Rewarding Terrorists' Families (Kyl) — Increases the maximum penalties for existing offenses regarding the material support of terrorism, creates a new federal offense of aiding the family or associates of a terrorist with the intent to encourage terrorist acts, and increases penalties for terrorist-motivated murders, kidnappings, and assaults.
- 3) State and Local Law Enforcement Authority (Sessions) — Clarifies the authority of state and local law enforcement personnel to assist the federal government in enforcing U.S. immigration laws. The amendment specifically states that participation of state and local law enforcement is voluntary.
- 4) Visa Revocation Reviewability (Grassley) — To prohibit judicial review of decisions to revoke visas from individuals who are on U.S. soil. Currently, suspected terrorists can stay in the United States after their visas have been revoked while that decision is reviewed in U.S. courts. The opportunity for judicial review makes deportation nearly impossible, jeopardizes classified intelligence, and may hinder investigations dealing with criminals and terrorists. In 2003, the GAO found that more than 100 persons had been granted visas that were later revoked due to terrorism links and associations.
- 5) Dangerous Criminal Aliens (Cornyn) — This amendment allows DHS to hold criminal aliens — including murderers, rapists, and child molesters — in detention, not only during proceedings to remove them from the United States but also after the alien has been issued a final removal order by an immigration judge. Under current law, DHS generally can only hold such aliens for a limited period of time (up to 6 months).
- 6) Sense of the Senate (Sessions) — To express the sense of Congress that money should be appropriated to fund the construction of fencing and vehicle barriers along the southwest border of the United States, construction of which Congress has repeatedly voted to approve.

Union Payback Part #2: Eliminating the Private Ballot

On March 1, the House voted to pass the so-called Employee Free Choice Act, a bill that would effectively deny workers the right to cast a private ballot in union organizing elections. Instead, unions would be officially recognized once a majority of employees had signed cards publicly expressing their support. Senator Kennedy has promised to introduce the bill in the Senate, and the Senate H.E.L.P. Committee held a related hearing on March 27.

For more than 60 years, federal labor law has guaranteed workers the right to cast private ballots.¹ The attempt to reverse this long-standing precedent comes in response to a desperate situation for *unions*, not for workers, as the following facts demonstrate.

Organized Labor's Desperate Attempt at Self-Preservation

- Union membership has been steadily declining since 1983. In 2005, only 12.5 percent of workers nationwide belonged to unions. In the private sector, only 7.8 percent were members.² Moreover, by a more than 3 to 1 margin, non-union workers say that they do not want to belong to a labor union.³
- While unions enjoy a 78 percent success rate when they rely on the card-check process, they see only a 48 percent success rate when private-ballot elections are conducted.⁴

Widespread Public Opposition to Eliminating Private Ballot Elections⁵

- 79 percent of voters oppose the Employee Free Choice Act.
- 87 percent of voters want to preserve the right to a private ballot.
- 89 percent of voters believe that a worker's vote on union organization should remain private.

Union Members Prefer Private Ballots⁶

- 71 percent of union members believe that the current private-ballot process is fair, versus only 13 percent who disagree.
- 78 percent of union members favor keeping the current system in place.

¹ For more information, see the Republican Policy Committee's two papers on the subject, "Labor Unions Seek to End Secret-Ballot Elections, the Cornerstone of Democracy" and "Union Elections by Secret Ballot Protect Workers' Rights." Both are available at www.rpc.senate.gov.

² Bureau of Labor Statistics, "Union Members in 2005," Jan. 20, 2006.

³ James Sherk, "Workers Reject Card Checks, Favor Private Ballots in Union Organizing," Heritage Foundation Web Memo No. 1363, Feb. 16, 2007.

⁴ CRS, "Labor Union Recognition Procedures: Use of Secret Ballots and Card Checks," CRS Report to Congress RL32930, May 23, 2005.

⁵ McLaughlin & Associates poll, available at <http://www.myprivateballot.com/UploadedFiles/CDW%20Polling%20Memo%20National.pdf>.

⁶ Zogby poll, available at www.mackinac.org/archives/2004/s2004-05.pdf.

Private Ballot Hypocrisy?

The House bill's chief sponsor (George Miller) sent the letter below to Mexican officials to emphasize the need for preserving secret ballots in some union elections.

Emphasis below is added.

August 29, 2001

Junta Local de Conciliacion y Arbitraje del Estado de Puebla,
Lic. Armando Poxqui Quintero, 7 Norte, Numero 1006 Altos,
Colonia Centro
Puebla, Mexico C.P. 72000

Dear members of the Junta Local de Conciliacion y Arbitraje of the state of Puebla:

As members of Congress of the United States who are deeply concerned with international labor standards and the role of labor rights in international trade agreements, **we are writing to encourage you to use the secret ballot in all union recognition elections.**

We understand that the secret ballot is allowed for, but not required by, Mexican labor law. However, we feel that **the secret ballot is absolutely necessary in order to ensure that workers are not intimidated into voting for a union they might not otherwise choose.**

We respect Mexico as an important neighbor and trading partner, and we feel that **the increased use of the secret ballot in union recognition elections will help bring real democracy to the Mexican workplace.**

Sincerely,

GEORGE MILLER, MARCY KAPTUR,
BERNARD SANDERS, WILLIAM J. COYNE,
LANE EVANS, BOB FILNER,
MARTIN OLAV SABO, BARNEY FRANK,
JOE BACA, ZOE LOFGREN,
DENNIS J. KUCINICH, CALVIN M. DOOLEY,
FORTNEY PETER STARK, BARBARA LEE,
JAMES P. MCGOVERN, LLOYD DOGGETT.

[The letter above appears in the Republican Views in H. Rept. 110-23, Employee Free Choice Act of 2007 (H.R. 800), February 16, 2007.]

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